



**TENNESSEE
STATE DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION
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MEMORANDUM

TO: Special Education Directors

FROM: Christy Ballard, Staff Attorney, Division of Special Education
Bill Ward, Legal Consultant, Division of Special Education

RE: Retention of Educational Records of Disabled Students

DATE: April 30, 2001

When must a school district destroy a disabled student's records?

This is an important administrative question because student records may contain test results, evaluations, past IEPs, correspondence, due process hearing transcripts, IEP meeting minutes, and teacher-produced anecdotal records, etc.

The governing authority is found at 34 C.F.R. Section 300.573.

300.573 Destruction of information.

(a) The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Subpart (a) requires schools to notify parents when materials in the student's record are deemed no longer necessary to provide appropriate services. In other words, schools may begin the removal of surplus materials any time that the information is judged to be of no value to the design or implementation of the child's educational program.

Subpart (b) requires that schools destroy such personally identifying but unnecessary records upon the parents' request. In short, when records are declared surplus, they must be destroyed when the child's parents ask that this be done. However, school districts may retain a permanent record of the "student's name address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed..." even if the parents request that the entire student record be destroyed. Best practice would be to retain the above listed information in perpetuity.

34 C.F.R. 300.560 defines destruction as "physical destruction or removal of personal identifiers from the information so that the information is no longer personally identifiable."

Must a school district keep student records for a specific time period?

Schools receiving federal funds are required to keep for three (3) years records necessary to show their compliance with federal and state mandates, (34 C.F.R. Section 76.730, financial records, and Section 76.731, program compliance requirement, Section 80.42, retention and access requirements for records).

Under previous law, (34 C.F.R. Section 76.734 *abrogated*) the required retention period was five (5) years. This regulation was the basis of several OSEP policy letters contributing to a continued confusion about the required retention period.

How may a school district keep records for three (3) years, as stated above, and still comply with a parent's request to destroy personally identifiable information that is no longer needed to provide educational services to their child?

The school district may remove any reference, which makes the information personally identifiable while still maintaining the records proving compliance with state and federal programs, 34 C.F.R. 300.560.